

LEGISLATIVE AUDIT COMMISSION



Review of
Illinois Commerce Commission
Two Years Ended June 30, 2003

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**REVIEW: 4204
ILLINOIS COMMERCE COMMISSION
TWO YEARS ENDED JUNE 30, 2003**

FINDINGS/RECOMMENDATIONS - 7

**PARTIALLY ACCEPTED - 2
ACCEPTED - 1
IMPLEMENTED - 4**

REPEATED RECOMMENDATIONS - 1

PRIOR AUDIT FINDINGS/RECOMMENDATIONS - 4

This review summarizes an audit of the Illinois Commerce Commission for the two years ended June 30, 2003, filed with the Legislative Audit Commission March 9, 2004. The auditors performed a compliance audit in accordance with State law and Government Auditing Standards.

The Illinois Commerce Commission is charged with regulating investor-owned telecommunications, electricity, natural gas, and water and sewer utilities, and competitive providers. In addition, the Commission also regulates and oversees household movers, towing companies which relocate trespassing vehicles, the enforcement of certain trucking insurance coverage laws, railroad grade crossing standards, rail movement of hazardous materials and gas pipeline safety.

The Public Utilities Act divides the regulatory authority of the Commission into two primary categories: the regulation of rates and service and the supervision of corporate transactions. The funds necessary to administer the Public Utilities Act are derived from three primary sources: a gross revenue tax imposed upon all regulated public utilities and telecommunications carriers, the fees levied for the authorization to issue securities of all regulated public utilities and those telecommunications carriers subject to the Public Utilities Act, and the electricity excise tax collected by the Department of Revenue in which 3% of the tax received is deposited into the Public Utility Fund.

Under the authority of the Illinois Commercial Transportation Act, the Commission administers and enforces financial responsibility, insurance and safety fitness requirements for all public trucking companies in Illinois; regulates intrastate household goods carriers to assure compliance with rates and service territory; and registers all intrastate and interstate trucking companies in Illinois. The Electric Supplier Act directs the Commission to act as an administrative decision-maker in territorial service area disputes and to consider negotiated agreements between electric cooperatives and investor-owned public utilities. The Gas Pipeline Safety Act grants to the Commission safety jurisdiction of all pipeline facilities within Illinois transporting natural gas, flammable gas or gas which is toxic or corrosive. Under the provisions of the Emergency Telephone

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System Act the Commission has been charged with the responsibility for implementing a statewide emergency telephone system.

The Commission's current chairman is Edward C. Hurley. The chairman is the designee of the Governor and functions as one of five members of the Commission. The Commission's Executive Director is hired by the Commissioners and is responsible for the daily operations of the Commission. The Executive Director position was held by Scott Wiseman during the audit period. He continues as the Executive Director.

Appendix A contains a summary of Illinois Commerce Commission activity measures for FY03, FY02, and FY01.

The average number of full-time employees is as follows:

	FY03	FY02	FY01
<i>Administrative Law Judges</i>	26	33	32
<i>Administrative Services</i>	24	44	37
<i>Chairman & Commissioners</i>	14	15	14
<i>Consumer Services</i>	11	24	25
<i>Executive Director's Office</i>	9	16	15
<i>Energy Division</i>	16	27	31
<i>Financial Analysis</i>	18	37	37
<i>Governmental Affairs</i>	2	10	4
<i>Office of the General Counsel</i>	29	24	26
<i>Office of Public Affairs</i>	3	5	5
<i>Telecommunications</i>	13	28	26
<i>Research & Analysis (Transportation)</i>	65	69	67
<i>External Affairs*</i>	13	0	0
<i>Public Utilities*</i>	43	0	0
<i>Planning and Operations*</i>	28	0	0
TOTAL	314	332	319

*In FY03, The Commission created three new divisions. External Affairs consists of some employees included in Consumer Services, Public Affairs, and Governmental Affairs during FY01 and FY02. Public Utilities includes former employees of the Energy Division, Telecommunications, and the Financial Analysis Division. Planning and Operations consists of individuals previously included in the Administrative Services Division.

Expenditures From Appropriations

The General Assembly appropriated a total of \$51,162,200 to the Commission in FY03, of which \$1,374,700 was from the General Revenue Fund; \$19,435,800 from the Transportation Regulatory Fund; \$25,351,700 from the Public Utility Fund; and \$5,000,000 was from the Digital Divide Elimination Infrastructure Fund. Appendix B summarizes these appropriations and expenditures for the period under review. Total expenditures

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decreased from \$37,575,694 in FY02 to \$36,949,228 in FY03, a decrease of \$626,466, or 1.7%. Program expenditures decreased due to budget constraints. The Digital Divide Elimination Infrastructure Fund was established in FY03. However, no funds were expended in FY03.

Lapse period spending was \$1.8 million or 4.9% for FY03, and \$2.6 million or 7% for FY02.

Cash Receipts

Appendix C provides a summary of the Agency's cash receipts for FY03-FY01. Total cash receipts were \$44,672,000 in FY01; \$34,344,000 in FY02; and \$45,321,000 in FY03. The sharp increase in FY03 was due to the establishment of the Digital Divide Elimination Infrastructure Fund. Telecom Carriers deposited \$10 million into the fund during FY03 even though half of that amount was not due until FY04. The decrease in fines during FY02, approximately \$8.9 million, is due to SBC meeting more of the Commission's established guidelines for levels of service.

Property and Equipment

Appendix D provides a summary of property and equipment for FY03 and FY02. Total property and equipment increased from \$5,419,673 as of July 1, 2001 to \$5,727,241 as of June 30, 2003.

Accounts Receivable

Appendix E summarizes the Commission's accounts receivable. The total net receivable, \$45,025,000 is comprised of \$44,932,000 in GRF; \$43,000 in the Transportation Regulatory Fund; \$22,000 in the Public Utility Fund; and \$28,000 in the Underground Utility Facility Damage Fund. Gross accounts receivable was almost \$45.6 million as of June 30, 2003, with an allowance for doubtful accounts of \$562,000, for a net of \$45 million. Net accounts receivable in FY02 was \$37.4 million.

The vast majority of receivables, \$44.9 million, are tax credits that must be paid back by qualified solid waste facilities. The facilities make monthly payments on the amounts they owe. The receivables in the Transportation Regulatory Fund are from administrative citations and civil penalties. The receivables in the Public Utility Fund for FY03 represent revenue taxes. The Underground Utility Facility Damage Fund was a new program started in 2003. Previously there was no fine if a company did not call JULIE and severed an underground utility. All the money from fines is deposited into the Fund and then is paid to JULIE annually.

Accountants' Findings and Recommendations

Condensed below are the seven findings and recommendations presented in the audit report. There was one repeated recommendation. The following recommendations are classified on the basis of information provided by Jane Hughes Jackson, Chief Internal Auditor of the Commission, in a memo received via electronic mail on August 13, 2004.

Partially Accepted

- 2. Establish a control system to ensure future reports are filed timely, or seek legislative remedy to the statutorily required due date of the annual report.**

Findings: The Commission did not file its annual report of expenditures to the General Assembly for the Transportation Regulatory Fund by August 30th.

Updated Response: Partially accepted. Estimated spending would have to be utilized for the Commission to be able to prepare and approve the Transportation annual report by August 30th. Filing a report prior to the end of the lapse period would provide an inaccurate and distorted report of expenditures. The Commission approved the annual report on September 22, 2003.

The FY05 proposed budget changes in the Transportation Bureau would require that the Illinois Commercial Transportation Law (ICTL) be rewritten. The ICC proposed a statutory change that would authorize the filing of the annual report at the end of the lapse period, however no change to the ICTL was passed by the General Assembly during the spring 2004 legislative session with regard to the TRF Annual Report of Expenditures. We will continue to pursue such a statutory change.

In order to file an accurate report, we will continue to prepare the report at the end of the lapse period.

- 3. Comply with the statutory mandate by promulgating the required rules concerning recovery of costs incurred from cancelled projects, or seek legislation that would eliminate the requirement for the rules.**

Findings: The Commission has not established rules or procedures to be used in evaluating how utilities are to recover and allocate costs incurred from the construction of generation or production facilities which have been cancelled.

Response: Partially Accepted. Section 9-216 of the Act was adopted in 1986 when there were several multi-billion dollar electric generating facilities under construction. At that time, there was considerable uncertainty about whether the generating facilities would be completed and how the cost of any cancelled generating facilities should be allocated.

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Since completion of the multi-billion dollar electric generating facilities discussed above, no electric utility has undertaken the construction of a major electric generating facility in Illinois. In addition, the Electric Service Customer Choice and Rate Relief Law of 1997 was adopted. Among other things, this eliminated the Commission's statutory authority to require electric utilities to construct new generating facilities. In addition, as a result of the significant statutory changes, virtually all utility owned electric generating facilities in Illinois have been either sold or transferred to affiliated companies.

No electric utility has constructed a major electric generating facility in Illinois in several years, and it is unlikely an electric utility will do so in the near future. Furthermore, given the time required to construct an electric generating facility, as well as the requirement that the Commission authorize construction of such a generating facility and approve any request to increase rates, the Commission would have ample time to adopt Section 9-216 rules should such a need arise. Thus, the Commission is in a position to comply, and will comply, with the finding and promulgate the Section 9216 rules in a timely manner should such rules become required.

As a result of the significant changes in the electric industry and the statutory scheme under which the Commission now regulates electric utilities, the Commission believes that rules governing the allocation of costs of constructing cancelled electric generating facilities are no longer needed. In the post 2006 initiative, the Commission will consider whether to modify or eliminate that section of the law.

Accepted or Implemented

- 1. Implement controls to ensure compliance with the statute regarding the fund balance in the Transportation Regulatory Fund or seek legislative remedy to the statutory requirement. (Repeated-1997)**

Findings: The Commission carried a fund balance in the Transportation Regulatory Fund that exceeded the fund balance permitted by law. The balance exceeded the statutory maximum by about \$1.3 million in FY03 and \$3.5 million in FY02. According to State law, the Commission shall administer fees and taxes in such a manner as to insure that any surplus generated or accumulated in the Transportation Regulatory Fund does not exceed the surplus generated or accumulated in the Motor Vehicle Fund during FY84. The balance in the Motor Vehicle Fund at the end of FY84 was almost \$2.9 million.

The Commission stated that in July 2003, \$2 million was transferred out of the fund due to the State's fiscal shortfall, which decreased the fund balance below the required limit.

Accepted or Implemented - continued

The auditors stated that failure to maintain the fund balance below the required limit results in the motor carrier industry paying higher fees and taxes than necessary.

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Updated Response: Implemented. The Commerce Commission has continued to work to reduce the Transportation Regulatory (TRF) balance. The Commission has not raised the fees imposed on the motor carrier industry while the Transportation Regulatory Fund balance has been above the required limit. Therefore, fees and taxes currently imposed do not reflect the true cost of regulating the industry.

In addition to the July 1, 2003 sweep of \$2,000,000, additional TRF funds were swept in February 2004 by the Governor's Office of Management and Budget. As a result, the fund balance is still well below the 1984 benchmark. The ICC will continue to pursue a statutory change to the fund balance restrictions. No changes to the ICTL regarding the fund balance restriction were passed by the General Assembly during the spring 2004 legislative session.

- 4. Comply with the State Officers and Employees Money Disposition Act by making timely deposits into the State Treasury and documenting the date that receipts are received. Additionally, submit Treasurer's drafts to the Office of the Comptroller in a timely manner. Lastly, implement controls over receipts to ensure adequate documentation is maintained and readily available.**

Findings: The Commission did not timely deposit or adequately support receipt transactions. The auditors noted the following weaknesses:

- Receipts were not deposited timely in the State Treasury. Twenty-seven of 100 receipts tested and two of nine refunds tested totaling almost \$2.3 million and \$955, respectively, were deposited 1 to 56 days late. Seven receipts tested totaling \$407,851 did not maintain documentation of the date received.
- Treasurer's drafts were not submitted to the Comptroller timely for 28 of 100 receipts tested. The 28 receipts totaled \$972,774.
- Supporting documentation could not be located for five of 100 receipt transactions plus nine of 25 transactions where fees were waived. The 14 transactions totaled \$2,034.

Updated Response: Implemented. The fiscal office will continue to prepare deposits on a daily basis. However, any individual receipts exceeding \$10,000 received prior to 2 p.m. will be deposited on the day of receipt. Of the receipts not deposited on a timely basis 12 receipts totaling \$2,259,656 (99%) were deposited the day after they were received which has been the process for at least the past decade.

The fiscal office works to make timely deposits into the State Treasury, and submits Treasurer's drafts to the Office of the Comptroller in a timely manner. The fiscal office date stamps all incoming mail. Any items received in the fiscal office and not stamped would be the result of the item not coming in through the normal channels.

The Commission has changed its procedures for issuing refunds and correcting erroneous transactions. Previously, personnel who needed to correct transactions that had been coded or keyed incorrectly were creating new entries rather than noting on the original

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entry that a change was needed. Policies and procedures have now been developed to provide a better record of transactions and personnel have been trained to use these new procedures when processing all transactions. Finally, we have taken steps to ensure adequate documentation is maintained and readily available.

5. Develop formal written policies and procedures to govern gross revenue tax return processing and receipt processing activities and guide employees' actions. Adequately safeguard deposits in transit.

Findings: The Commission did not have adequate policies and procedures for the processing of gross revenue tax returns and other receipts. The auditors noted the following:

- The Commission had no formal approved policies and procedures for checking the accuracy of revenues reported and deductions taken on gross revenue tax returns. During FY02 and FY03, respectively, the Commission processed more than 972 and 1,008 quarterly, annual or revised gross revenue tax returns, which produced approximately \$10.3 million and almost \$8.3 million in revenues, respectively.
- The Commission did not have formal policies and procedures for receipts processing. The Commission reported approximately \$34 million and \$45 million in receipts for FY02 and FY03, respectively.
- Adequate safeguards did not exist for cash receipts in transit from the Commission to the bank. Daily deposits were initially kept in a safe, then moved to the mailroom prior to transport to the Treasurer's office. The mailroom was unlocked and unmonitored and allowed easy access to the deposits by anyone entering the mailroom.

Updated Response: Accepted. To address the internal control weakness as related to the deposit the fiscal office has changed the process. The mailroom is now notified when the deposit is ready and they will collect the deposit just prior to making their morning run. At no time is the deposit left unattended in the mailroom. The new process is functioning to protect the deposit until it is delivered to the Treasurer's Office.

Formal written procedures are still being drafted for receipt and gross revenue tax processing.

Accepted or Implemented - concluded

6. Timely identify and formally notify the Comptroller's Office of all corrections and unreconciled differences identified by the monthly reconciliations of agency receipts and expenditures to Comptroller records as required by SAMS to ensure accurate accounting records are maintained.

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Findings: The Commission did not maintain accurate and properly reconciled accounting records. The auditors noted the following:

- The Commission's expenditure records were inaccurate and did not agree with Comptroller's records for 7 of 28 and 8 of 28 appropriation line items in the Transportation Regulatory Fund and 6 of 26 and 11 of 26 appropriation line items in the Public Utility Fund for FY02 and FY03, respectively. In addition, 1 of 3 appropriation line items in the General Revenue Fund did not agree to the Comptroller records in FY03. Unreconciled differences, which ranged from \$5 to \$9,790, were not reported to the Comptroller's Office as required.
- The Commission receipt records did not agree with the Comptroller's records for 6 of 6 and 5 of 7 receipt accounts in the Transportation Regulatory Fund, and 3 of 7 and 2 of 7 receipt accounts in the Public Utility Fund for FY02 and FY03, respectively. Unreconciled differences, which ranged from \$84 to \$15,856, were not formally reported to the Comptroller's Office.

The above items could have been corrected if the agency had timely notified the Comptroller's Office of all unreconciled differences noted in the monthly reconciliations of agency records to Comptroller records.

Updated Response: Implemented. The errors noted in the reconciliations of both revenue and expenditures were due to isolated instances and we are aware of no repeated problems related to this finding. As necessary, the correct forms have been completed and sent to the Comptroller's Office.

7. Ensure that mandated reviews of computer systems are performed by Internal Audit.

Findings: Internal Audit did not perform mandated Information Systems reviews of the Commission's computer systems. Internal Audit did not conduct scheduled Information System audits as outlined in the two-year audit plan. The Commission had nine system development projects; however, Internal Audit did not review the projects.

Response: Implemented. Internal audit has always been concerned with the integrity of IT (Information Technology) and electronic systems. To that end we recognized the need for additional audit support when our IT section was planning numerous major projects, both new systems and major upgrades to existing systems. All contracts were put on hold in January 2003. With the budget cuts in 2003 and 2004, the new systems and major enhancements originally planned have been dropped or dramatically curtailed.

Internal Audit worked with IT to formulate an audit schedule for all major new systems and system upgrades. Internal Audit has completed auditing two phases each for two major systems.

Emergency Purchases

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The Illinois Purchasing Act (30 ILCS 505/1) states that “the principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts ...” The law also recognizes that there will be emergency situations when it will be impossible to conduct bidding. It provides a general exemption for emergencies “involving public health, public safety, or where immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage ... prevent or minimize serious disruption in State services or to insure the integrity of State records. The Chief procurement officer may promulgate rules extending the circumstances by which a purchasing agency may make ‘quick purchases’, including but not limited to items available at a discount for a limited period of time.”

State agencies are required to file an affidavit with the Auditor General for emergency procurements that are an exception to the competitive bidding requirements per the Illinois Purchasing Act. The affidavit is to set forth the circumstance requiring the emergency purchase. The Commission receives quarterly reports of all emergency purchases from the Office of the Auditor General. The Legislative Audit Commission is directed to review the purchases and to comment on abuses of the exemption.

During FY02 and FY03, the Commission filed no affidavits for emergency purchases.

Headquarters Designations

The State Finance Act requires all State agencies to make semiannual headquarters reports to the Legislative Audit Commission. Each State agency is required to file reports of all its officers and employees for whom official headquarters have been designated at any location other than that at which official duties require them to spend the largest part of their working time.

As of July 2003, the Illinois Commerce Commission had 40 employees who spent the largest part of their working time at locations other than their assigned headquarters.